

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: Bolduc, et al.	Confirmation No.:	8124
Serial No.	: 10/628,920	Art Unit	: 3734
Filed	: July 29, 2003	Examiner	: C. Gettman
Title	: Methods and Devices for Maintaining a Cardiopulmonary Bypass and Arresting a Patient's Heart		

I hereby certify that this correspondence is being electronically filed with the  
Commissioner for Patents on June 13, 2008.

\_\_\_\_\_  
/Brian S. Tomko/

Brian S. Tomko

(Name of applicant, assignee, or Registered Representative)

June 13, 2008

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REBUTTAL BRIEF**

Dear Sir:

This Rebuttal Brief is filed in response to the Examiner's Answer, which was mailed on May 13, 2008.

**Issue: "Positioning ... through the opening"**

The second step of independent claim 58 requires "positioning the first end of each of the plurality of clips through the opening in the target vessel." Figure 13B of the specification of the current application shows an opening, indicated by the letter O, in a target vessel, indicated by the letter T. A plurality of clips are positioned through the opening O as depicted in Figures 13B and 13C.

In arguing that the method of applying the clips of U.S. Patent No. 4,809,695 to Gwathmey anticipates this step, the Examiner states at section 10 (bottom of page 4) of the

Answer that the clips of Gwathmey “must go through an opening of each of the vessels in order to secure the vessels relative to each other.” The Examiner states that the interior walls 112, 114 of the two vessels anastomosed in Figure 18 form part of the opening. Further, the Examiner states that Figure 20 of Gwathmey depicts “an opening of one vessel that is being secured to the opening of another vessel”.

Appellants submit that the step of “positioning the first end of each of the plurality of clips through the opening of the target vessel” is not described in Gwathmey. As to the method step described in conjunction with Figure 18 there is no opening. As described at column 7, lines 13-21, “[w]hen the surgeon desires to suture a first and second tissue 112 and 114 (FIG. 18) together, he everts their edges slightly and places them together so as to form a flange 118.” Once the surgeon places the tissue edges together, there is no opening. At that point in the method, the surgeon positions the clips *about* (rather than through) the everted tissue and deforms the clip under a force applied by pliers to secure the first tissue 112 and the second tissue 114 together as shown in Figure 19. Thus, the surgeon never positions “the first end of each of the plurality of clips through the opening in the target vessel”.

Even where, as depicted in Figures 22 and 23 of Gwathmey, the tissue appears not to be everted (though it is not clear that they are not), the two vessels to be anastomosed are at least approximated prior to deforming the clips of Gwathmey. Again, there is no opening through which the first end of the plurality of clips may be positioned through.

Thus, in either the method described in conjunction with Figures 18 and 19 or Figures 22 and 23, the first end of the clip are not positioned through an opening. Instead, the clips are passed through the outside of the vessel through to the interior of the vessel. The interior of the blood vessels do not constitute an opening. The clips of Gwathmey are not positioned through an opening in a target vessel.

As such, for the reasons discussed above, Appellants maintain that the final rejection of claims 58-69 should be reversed.

Respectfully submitted,

By: /Brian S. Tomko/  
Brian S. Tomko  
Reg. No. 41,349

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
(732) 524-2823  
Dated: June 13, 2008